

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to consider **AMERITECH MICHIGAN's** compliance)
with the competitive checklist in Section 271 of) Case No. U -12320
the federal Telecommunications Act of 1996.)
_____)

**WORLD COMPETITION FOR REHEARING WITH RESPECT TO
RATES CHARGED FOR DIRECTORY ASSISTANCE LISTINGS**

MCI Metro Access Transmission Services LLC, Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc., (hereinafter individually or collectively referred to as "WorldCom" or "MCI", unless indicated otherwise by context) , hereby submit its petition for rehearing of the Commission's January 13, 2003, order in this matter with respect to rates charged for directory assistance listings. ¹

INTRODUCTION

In addressing the standards for a rehearing, the Commission has stated as follows:

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACSR, R460.1 7403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to

¹WorldCom considers this present petition to be part one of a possible two-part petition. The deadline for filing petitions for rehearing from the January 13, 2003 order is February 12, 2003. However, the Commission's comment to the FCC are due February 6, 2003. Accordingly, this present filing is being submitted earlier than required so as to allow the MPSC an opportunity to correct a clear error in its report prior to submission to the FCC with respect to the pricing of DAL, or to at least allow the MPSC to correct this clear error by a supplemental filing with the FCC in an expedited manner. WorldCom may submit other issues for rehearing within the time allowed for filing for rehearing.

express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing. ²

Based on these standards, WorldCom seeks rehearing with respect to the extent to which the January 13, 2003 Commission order in this matter approved or endorsed that portion of the January 13, 2003 Report Of The Michigan Public Service Commission ("Commission Report" or "Report") at pages 108-109 where it apparently concluded that SBC has priced Directory Assistance Listings (DAL) at TSLRIC rates. To the extent to which the Commission's order of January 13, 2003, adopted with approval the Commission's Report in this regard, WorldCom seeks rehearing.

The pertinent portions of the Report which are at issue state as follows:

3. Pricing of Access to DAL Listings

WorldCom complains that SBC does not offer DAL listings at TSLRIC rates. It points out that SBC does not have a Commission approved cost study for DA listings. In fact, WorldCom argues, SBC's argument that it did not have an obligation to provision unbundled DA listings persuaded the Commission to defer issuing a DA listing costing decision in Case No. U - 11831. Thus, WorldCom argues, it is SBC's fault that it has no currently approved cost study for DA listings. WorldCom asserts that its ability to access the DA listing database at reasonable and nondiscriminatory prices is essential to its ability to compete. In WorldCom's view, pricing DA listings at TSLRIC would meet those criteria. It argues that under Michigan law, DA and DA listings are required to be priced at TSLRIC.

SBC responds that the Commission should reject WorldCom's claim that DA listings should be priced at TSLRIC. It argues that WorldCom's suggestion was rejected in the UNE Remand Order, in which the FCC recognized DA listings as a competitive wholesale service and declined to expand the definition of DA to include DA listings or to require DA listings to be provided at forward-looking prices.

² *In the matter of the petition of the MICHIGAN PAY TELEPHONE ASSOCIATION to initiate an investigation to determine whether Michigan Bell Telephone Company, d/b/a Ameritech Michigan, and GTENorth Incorporated are in compliance with the Michigan Telecommunications Act and Section 276 of the Communications Act of 1934, as amended*, Case No. U - 11410, 1998 Mich. PSC LEXIS 75, February 25, 1998, p. 2.

Moreover, SBC asserts, the FCC has approved Section 271 applications for states in which SBC's affiliate charges market-based rates for access to DA listings.

The Commission in its December 20, 2001 order in this case found that SBC read too much into the cited portion of the UNE Remand Order. In the cited paragraph, the FCC declined to "expand the definition of OS/DA... to provide directory assistance listing updates in daily electronic batch files... [because] the obligations already exist under Section 251(b)(3), and the relevant rules promulgated thereunder." Specifically, 47 CFR 51.217(c)(3)(i) requires that an ILEC permit CLECs to have access to the ILEC's "DA services, including directory assistance databases... on a non-discriminatory basis...."

The FCC further referenced its prior Directory Information Listing Order, in which the FCC reaffirmed its previous conclusions that incumbent LECs must provide DA listing access equal to that which they provide themselves. It stated that "any standard that would allow a LEC to provide access to any competitor that is inferior to that enjoyed by the LEC itself is inconsistent with Congress' objective of establishing competition in all telecommunications markets." The Commission found that the requirement to provide non-discriminatory access to DA listings required that it be provided at cost-based rates consistent with Case No. U -11831 parameters, and on a basis equal to that which the incumbent provides itself. In other words, SBC must permit CLECs to access the DA listings electronically and to order directory listings in an electronic format.

As to SBC's claim that the FCC found DA listings to be a competitive wholesale service, the Commission found in its December 2001 order that the FCC conclusion relates only to ILECs that provide customized routing. The Commission previously found that SBC did not provide reasonable customized routing. Moreover, although the FCC may have approved Section 271 applications for states in which the incumbent charged market rates for DA listings, SBC does not cite a particular portion of those orders discussing the issue. If an issue was not raised in a case, the FCC's failure to reject the application on that basis does not carry persuasive weight in the Commission's determination in this case.

The December order found that the prices were non-compliant. SBC filed a revised tariff in April 2002, and is now compliant with the Commission's requirements in this area.³

The tariff which SBC filed in April 2002 is not of record in this proceeding. No notice has been given to participants in this proceeding of this April 2002 tariff filing. This April 2002 SBC tariff filing, which only came to the attention of counsel for WorldCom after the Commission Report was issued, references that it was issued as a result of the proceedings in SBC's last TSLRIC case

³Commission Report, pages 108 -109 (footnotes deleted).

(Case No. U -11831), but SBC also failed to serve notice of this tariff filing to parties of record in Case No. U -11831. Also, the rates contained in this tariff filing are based on the exact same December 16, 1999 SBC cost study regarding DAL which this Commission rejected in its August 31, 2000 order in Case No. U -11831. Accordingly, since SBC is relying upon a rejected cost study to assert TSLRIC rates for DAL, and since there is absolutely no record of evidence in this proceeding to show that SBC's rates for DAL comply with TSLRIC, the Commission must grant rehearing on this issue and find that SBC still fails to provide TSLRIC rates for DAL.

THE COMMISSION HAS ALREADY REJECTED THE COST STUDY UPON WHICH THE APRIL 2000 TARIFFED DAL RATES ARE BASED

The Commission has already rejected the cost study upon which the April 2000 tariffed DAL rates are based. The Attachments to this Petition help to explain the chronology of events.

WorldCom witness Michael Starkey submitted an affidavit dated April 1, 1999 in Case No. U-11831 (excerpts of the public version are attached as Attachment "A") which addressed the pricing of DAL. In this filing Mr. Starkey noted that SBC did not offer TSLRIC based pricing for DAL in Michigan. He also noted that the rates that SBC offered for DAL are significantly higher than the TELRIC rates for DAL offered in other states. For example, the SBC Michigan initial load per listing rate of \$0.0280 was 329% higher than the corresponding rate in New York and 2545% higher than the corresponding rate in Texas. The SBC Michigan rate for DAL updates, per listing, of \$0.0362 was 646% higher than New York and was 2586% higher than the corresponding rate in Texas.

Michael Starkey on July 17, 1999 in Case No. U -11831 filed an additional affidavit (excerpts of the public version are attached as Attachment "B") which addressed the SBC "Advanced Dialing

Parity DAL Listings Product” cost study which had been served on WorldCom two weeks prior in that docket. Mr. Starkey showed how this study was inadequate and in how that SBC study did not treat DAL as a UNE.

On November 16, 1999, this Commission issued an order in Case No. U -11831 which addresses the pricing of DAL. Pertinent excerpts are attached as Attachment “C”. In this order, at page 38, the Commission rejected SBC’s approach to DAL costing and stated: “Ameritech Michigan shall file cost studies for directory assistance listings database and unbundled network element combinations with its compliance filing. Ameritech Michigan must provide these services to CLECs and accordingly must provide cost data. A failure to file required studies in future proceedings may result in the imposition of penalties.”

SBC on December 19, 1999, in Case No. U -11831 made a confidential filing with respect to its purported cost studies for DAL (which it called “Advanced Dialing Parity DAL Listings Product”), with service to WorldCom and others subject to the Protective Order entered in that case. Due to the confidential nature of that filing it is not attached to this Petition in this docket. However, it appears that the rates which SBC filed in its April 2002 tariff are based on this December 19, 1999 filing.

On May 31, 2000, in Case No. U -11831 Michael Starkey filed an affidavit which addressed this SBC December 19, 1999 filing. Excerpts of the public version of the affidavit are attached as Attachment “D”. Mr. Starkey noted certain grave deficiencies in this SBC filing, including the fact that SBC had used one study for the DAL costs for CLECs (the “Advanced Dialing Parity DAL Listings Product”) and had another study which it used for determining its own DAL costs (the “Directory Assistance Listings License Product”). SBC also failed to spread the cost over a

sufficient number of carriers who would actually access the DAL. Based on his analysis, Mr. Starkey recommended modifications to the SBC proposed DAL rates as follows:

Rate Element	SBC Proposed Rate	Adjustment	MC Proposed Rate
Per Listing, Initial Load	\$0.025	x.25=	\$0.006
Per Listing, Updates	\$0.025	x.25=	\$0.006
Updates (fulfillment) costs per month	\$1,102.71	x.25=	\$275.68
Nonrecurring costs per customer per state	\$4,464.76	x.25=	\$1,116.19

On June 14, 2000, in Case No. U -11831, Staff submitted comments on the cost study submitted by SBC for DAL. Excerpts from this filing are attached as Attachment "E". In this filing, Staff reviewed the May 31, 2000, affidavit of Mr. Starkey and then stated: "From a TSLRIC standpoint, having two separate DAL listings studies makes absolutely no sense. More importantly, two separate DAL listings conflict with cost principle No. 3, which states that the increment being studied should be based on the entire quantity of the service. Ameritech should be required to conduct one DAL listings study and to spread the cost over the total carriers (retail, UNE and Ameritech itself) who access the service." (Staff Comments, Attachment "E", at pages 17 -18.)

The August 31, 2000, order of this Commission in Case No. U -11831 next addressed the SBC "compliance" filing regarding the pricing of DAL. Excerpts are attached as Attachment "F". The Commission reviewed the position of the parties and then rejected the SBC cost study at issue and ruled as follows: "The Commission agrees with Staff that there should be one study for all IDA services. It is not permissible to compute different costs depending upon who is purchasing the

service.”The order went on to state that “However, this proceeding does not provide the opportunity to resolve Ameritech Michigan’s recent claim that DA services are not UNEs and need not be priced as such. Therefore, Ameritech Michigan shall offer and price DA services as a UNE until the issue is resolved in some other proceeding.” (August 31, 2000, Order, at pages 11 -12).

In the present proceeding, the Commission’s December 20, 2001, order further addressed SBC not having filed TSLRIC rates for DAL. Pertinent excerpts from this order are set forth as part of Attachment “G”. In this order the Commission determined that SBC need stop provision DAL at TSLRIC based rates.

By letter to the MPSC dated April 29, 2002, SBC apparently responded to this December 20, 2001 order with a tariff filing which it chosen not to serve on the parties of record in this proceeding, nor on the parties of record in Case No. U -11831. Counsel for WorldCom in this matter was not aware of this tariff filing until after the January 2003 Commission order. A copy of this tariff filing is set forth as Attachment “H”. The SBC cover letter accompanying this tariff filing states that “The cost studies supporting this offering were developed in compliance with the Commission’s Orders in Case No. U -11831 and were filed in compliance with that docket on December 16, 1999.” In other words, the cost studies upon which the DAL tariffed rates are based are the same cost studies which the Commission rejected with its August 30, 2000, order in Case No. U -11831.

In Michigan, an unlawful tariff is not effective. As previously noted by this Commission, “... in Maislin Industries v. Primary Steel ___, 497 US 116; 110 SCt 2759; 111 LEd 2d 94 (1990), it was determined that the filed rate doctrine is not applicable if the rate is unlawful or unreasonable. Additionally, in Security Services, Inc. v. KMart Corporation ___, 511 US 431; 114 SCt 1702; 128 LEd

2d433(1994),itwasheldthatapartyhasnorightto rely on a filed, but void, tariff.”⁴This DAL tariff has been filed in direct contradiction to the August 31, 2000 Commission order which rejected the cost study for DAL relied upon by SBC for its April 2002 tariff filing.

This Commission in this docket has previously addressed a situation where Ameritech has unilaterally changed the pricing in its tariff. The Commission has been quite clear that Ameritech is not permitted to unilaterally change its tariffs and that if it desires to propose changes to its tariffs, it must take appropriate steps to gain that approval. The Commission stated:

It appears to the Commission that the existence of these new branding charges can be traced to Ameritech Michigan's tariff filing following the Commission's March 19, 2001 order in Case No. U-12622, an order dealing with shared transport. Following that order, Ameritech Michigan filed with the Commission's Communications Division Advice No. 3064, which contained the company's proposed shared transport tariffs. However, included in those proposed tariffs were the two additional branding charges at issue here. Before that filing, the only branding charge in the Unbundled O Stariff was a one-time trunk charge of \$403.64. Ameritech Michigan enclosed costs support for both new charges with Advice No. 3064. However, neither the general issue of branding nor additional charges for branding was even mentioned in Case No. U-12622. It appears that Ameritech Michigan unilaterally determined that it should insert these two new branding charges in its proposed tariffs following the March 19 order. Such unilateral changes to tariffs are not lawful or appropriate. If Ameritech Michigan desires to propose these charges, it must take appropriate steps to gain Commission approval. Until that time, Ameritech Michigan may not impose these charges, including the per call branding charge. See, the Commission's March 7, 2001 order in Case No. U-12540.⁵

⁴ Order of December 4, 2000 in Case Nos. U-10138/U-11743, *In the matter of the complaint of MC TELECOMMUNICATIONS CORPORATION against AMERITECH MICHIGAN and GTE NORTH INCORPORATED* relative to their not making intra LATA equal access available to MCI in the state of Michigan, and *In the matter of the application and complaint of MCI TELECOMMUNICATIONS CORPORATION against MICHIGAN BELL TELEPHONE COMPANY, d/b/a AMERITECH MICHIGAN*, seeking (i) a 55% discount on intrastate switched access service where intra LATA dialing parity is not provided and (ii) an order requiring implementation of intra LATA dialing parity on an expedited basis now that July 1, 1997 has passed, at page 12.

⁵ Order in this matter of December 20, 2001, page 14.

Here, SBC has taken no appropriate step to obtain Commission approval of its rates for DAL. Instead, it filed a tariff advice, but this Commission has already determined that filing a tariff advice is not a lawful way to change a tariff of this nature. SBC has unlawfully filed DAL tariffed rates which are based on a cost study which this Commission has specifically found to be deficient. It is clear the SBC is not offering DAL at TSLRIC rates.

CONCLUSION

Based on all of the above, it is clear that this Petition for Rehearing must be granted as the Commission Report contains a significant error as shown by the evidence set forth in this Petition and the newly discovered evidence only brought to light after the issuance of the Commission Report. Furthermore, unless this Petition for Rehearing is granted the unintended consequences resulting from compliance with the order would be that the Commission would be approving an unlawfully filed tariff, that the Commission would be encouraging companies to unlawfully file tariffs, and that the Commission would be calling the DAL rates in that tariff to be TSLRIC based even though the Commission has already rejected the cost study upon which these rates are based.

Wherefore, the Commission should grant rehearing in this matter and should find that SBC is not offering DAL at TSLRIC rates and that therefore SBC is not in compliance with Checklist Item 7. In order for SBC to come into compliance on pricing for DAL, WorldCom would not object if SBC filed the MCI proposed DAL rates as set forth in the chart above at page 6 or the rates charged by SBC in Texas (subject to Commission approval) and that these rates were offered to WorldCom without any strings attached. Alternatively, WorldCom would not object if there was a final order

entered in another proceeding in which the appropriate rates for DAL were addressed and determined and these rates were offered to WorldCom without any strings attached. However, SBC at present cannot be in compliance with Checklist Item 7 until it has on file Commission approved TSLRIC rates for DAL based on an approved cost study and makes these approved rates available to CLECs.

Respectfully submitted,

WorldCom

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